

17/055/002

SEP 21

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

IN THE MATTER OF:

Butterfield Waste Rock
SITE NO. R2

Kennecott Corporation

RESPONDENT.

PROCEEDING UNDER SECTION 106(a),
OF THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION, AND
LIABILITY ACT, AS AMENDED (42 U.S.C.
§ 9606(a)).

CERCLA VIII-91-18

ADMINISTRATIVE ORDER ON CONSENT
FOR REMOVAL ACTION

RECEIVED

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DIVISION OF
OIL GAS & MINING

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ATTACHMENTS

- Exhibit 1. Map
- Exhibit 2. Work Plan

I. INTRODUCTION

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Kennecott Corporation and its subsidiary companies ("Respondent"). This Order requires Respondent to perform removal activities specified in the Work Plan and to reimburse certain response costs incurred by the EPA in connection with the Butterfield Waste Rock site ("Site") approximately three miles west of the town of Lark, in the southwest portion of Salt Lake County, Utah.

II. JURISDICTION

2. This Order is issued under the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12,580, 52 Fed. Reg. 2,923 (1987), and further delegated to Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C. This authority has been further delegated to the Director of the Hazardous Waste Management Division.

3. Respondent and EPA agree to undertake all actions required of them individually by this Order. In any action to enforce the terms of this Order, Respondent will not contest the authority or jurisdiction of EPA to issue or enforce this Order, and neither party will contest the validity of this Order or its terms.

III. PARTIES BOUND

4. This Order shall be binding upon EPA, and upon Respondent, and upon their agents, representatives, successors and assigns. No change in the ownership or corporate status of Respondent shall alter Respondent's responsibilities under this Order.

5. During the period in which this Order is in effect, Respondent shall provide a copy of this Order to any subsequent owners or successors before any interest in property or stock are transferred. (A subsequent owner or successor is defined for purposes of this paragraph 5 as a transferee of at least five percent of the stock of Kennecott Corporation, or of any property at the Butterfield site, as measured on the effective date of this Order). Respondent shall provide a copy of this Order to all contractors retained to conduct any Work under this Order, within five (5) days of retaining such services. Respondent shall provide a copy of this Order to those contractors already retained to perform work under this Order within five (5) days of the effective date of this Order. Respondent shall condition any

contracts for performance of Work upon satisfactory compliance with this Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Order and for ensuring that its contractors comply with this Order.

IV. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) shall have the meaning assigned to them in CERCLA or in the NCP. For purposes of this Order, the following terms shall have the meanings set forth below.

"Contractor" means any person, including the contractors, subcontractors, consultants, laboratories, agents, or other representatives, retained or hired by Respondent to undertake any Work under this Order.

"Day" means calendar day, unless otherwise specified. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or a Federal holiday, the period shall run until the close of business on the next working day. Time will be computed in accordance with Rule 6 of the Federal Rules of Civil Procedure, unless otherwise specified.

"Deliverable" means any written product describing the Work performed or to be performed, including, but not limited to, technical reports, data reports, technical memoranda, progress reports, or other documents describing the Work performed or to be performed, that Respondent is required to submit under the terms of this Order.

"NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Order" means this Order, the exhibits attached to this Order, and all documents or modifications to documents incorporated by reference into this Order according to the procedures set forth herein. If there is a conflict between this Order and any documents incorporated into this Order, the terms of the text of the Order shall control.

"Site" for purposes of this Order, means the Butterfield Waste Rock Site, including the areal extent of waste rock deposition, areas affected by waste rock and all suitable areas necessary for implementation of the removal action, including any staging or storage areas for waste rock and other materials. The Site is limited to the area depicted

on Exhibit 1 to this Order. Exhibit 1 may be modified by agreement of the parties and any such modification shall be incorporated into the definition of the Site.

"Work" means all tasks Respondent is required to perform under the Work Plan.

"Work Plan" means the detailed plan of activities implementing the requirements of this Order. The Work Plan includes the document which describes Work activities, the sampling and analysis plan, and any other plan (or modifications thereto) required by this Order and approved by EPA. In addition, the Work Plan may include other plans suggested by Respondent and approved by EPA pursuant to this Order or produced pursuant to paragraph 22 of this Order. All such plans are herein incorporated by reference into this Order. The Work Plan is Exhibit 2 to this Order.

V. STATEMENT OF PURPOSE

7. The objectives of EPA and Respondent under this Order are for Respondent to conduct, with EPA oversight, a removal action at the Site as described in the Work Plan which is consistent with CERCLA and the NCP and to reimburse EPA for any and all response costs incurred at the Site, including oversight costs.

8. The activities conducted under this Order are subject to approval by EPA and shall be conducted in compliance with CERCLA and the NCP and any amendments to CERCLA and the NCP.

VI. FINDINGS OF FACT

9. This Order is based on the following findings of fact by EPA and upon the administrative record for this response action. Respondent does not admit, deny, or consent to the findings of fact set forth in this Section VI.

Site Description and History

10. The Butterfield Waste Rock Site is located in Butterfield Canyon (Section 12, T4S, R3W) approximately three miles west of the town of Lark, in the southwest portion of Salt Lake County, Utah. The area is undeveloped with less than 600 people living within a four mile radius of the Site. Kennecott brought the Site to the attention of the State of Utah ("State") and EPA. The Site includes, but is not limited to, the waste rock piles which were created during construction of the Butterfield drainage tunnel by Combined Metals Reduction Company in 1912 and related mining operations. EPA is not aware of any information at this time indicating that Kennecott operated the Butterfield tunnel and/or mine during the period in which the

waste rock was produced. The approximately 1.5 million tons of waste rock located at the Site contain heavy metals, including lead and arsenic.

11. Historical lead mining likely was the cause of heavy metals contamination at the Site. Waste rock was end-dumped from ore cars into and along the side of the canyon. The canyon is steep sided and the waste rock at the foot of the main pile extends up the canyon wall about 100 feet above the normal flood stage of Butterfield Creek. This pile extends from the mine down the creek about 2000 feet.

Release or Threatened Release

12. Sampling activities conducted at the Site have led EPA to determine that waste rock piles at the Site threaten to contaminate Butterfield Creek and thereby impact water quality in the area. Additionally, an area near this Site is used for picnicking by local residents. The presence of waste rock at this Site thus poses a threat of direct contact to the public. Lead, arsenic, and other hazardous substances continue to be released into the environment including into surface waters as a result of the presence of waste rock at the Site. These conditions may constitute an imminent and substantial endangerment to human health and the environment.

Endangerment

13. Arsenic is a known carcinogen, and lead is a cumulative poison which can cause neurologic, kidney, and blood cell damage in humans. Infants and children are at the greatest risk from exposure to lead and arsenic. Some lead compounds are also animal carcinogens adversely affecting the lungs and kidneys. The primary exposure routes at the Site are direct contact and contamination of Butterfield Creek.

Respondent

14. Respondent is the owner of the real property where the Butterfield Waste Rock Site is located. Respondent is qualified to perform the actions set forth in this Order.

Response Actions

15. To date, no prior CERCLA response actions have taken place at this Site.

VII. CONCLUSIONS OF LAW AND DETERMINATIONS

16. Based on the preceding Findings of Fact and the administrative record for the Site, EPA has made the following conclusions of law and determinations. Respondent does not admit, deny, or consent to the conclusions of law and determinations set forth in this Section VII.

- a. The Butterfield Waste Rock Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9);
- b. Substances, including lead and arsenic, found at the Site are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14);
- c. The presence of hazardous substances at the Site and the past, present, or potential future release of hazardous substances described in section VI of this Order constitute an actual and/or threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22);
- d. Respondent is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21);
- e. EPA has determined that the hazardous substances in the waste rock, soils, and other materials that are the subject of the Work Plan are solid wastes from the extraction of ores and minerals, within the meaning of section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6921(b)(3)(A)(ii). This determination means that waste rock, soils, and other materials that are the subject of the Work Plan are not "hazardous wastes" within the meaning of RCRA; } what!
- f. The actual or threatened release of hazardous substances from the Butterfield Waste Rock facility may present an imminent and substantial endangerment to public health or welfare or the environment; and,
- g. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation.

- h. Respondent is an "owner" under section 107(a)(1) of CERCLA, 42 U.S.C. § 9601(4) and defined in 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

VIII. NOTICE TO STATE

17. By providing a copy of this Order to the State, EPA has notified the State that this Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order.

IX. WORK TO BE PERFORMED

18. Respondent shall perform the following Work detailed in the Work Plan, which is Exhibit 2 to this Order. That Work generally includes:

- a. Removal of the waste rock from the Butterfield Canyon floor and walls.
- b. Relocation of the excavated waste rock to the repository.

19. Work Plan. The Respondent shall produce and submit for EPA approval a Work Plan (Exhibit 2) describing the Work activities including, at a minimum, but not limited to, a Sampling and Analysis Plan, a Health and Safety Plan, and a Quality Assurance Project Plan no later than thirty (30) days from the effective date of this Order. These plans are hereby incorporated by reference into this Order as Exhibit 2. If EPA disapproves the Work Plan in whole or in part, Respondent shall amend and submit to EPA a revised Work Plan, within fifteen (15) days of receiving EPA's written notification stating the reasons for such disapproval. The Health and Safety Plan shall be prepared and implemented in accordance with the Occupational Health and Safety Administration ("OSHA") regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. § 1910. EPA will not, however, provide approval for the Health and Safety Plan.

20. Respondent shall submit deliverables to EPA as provided by this Order and the Work Plan and shall conduct activities within the scope of this Order as approved by EPA. All Work is to be conducted in accordance with the schedule set forth in Exhibit 2 of this Order, as well as the standards, specifications and other requirements of this Order (including the Work Plan or any Work Plan amendment approved by EPA). EPA's approval of any deliverable pursuant to this Order constitutes a determination that the subject addressed by that deliverable is consistent with the NCP. However, if the subject of the deliverable is a plan for any type of activity, no determination of consistency of the

activity itself with the NCP shall be made unless EPA has determined, at the conclusion of the activity, that the activity was performed in compliance with the approved plan. EPA's acceptance of Respondent's Notice of Completion pursuant to paragraph 80 shall constitute a determination that all Work performed by Respondent under this Order is consistent with the NCP, except for any future operation and maintenance.

21. All Work shall be performed under the direction and supervision of qualified personnel. Five (5) days prior to the start of any Work by any contractor under this Order, Respondent shall notify EPA in writing of the names, titles, and qualifications of the principal personnel, including contractors, to be used in carrying out such Work. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification that such persons meet minimum technical, competence, and experience requirements. EPA may disapprove in writing of any contractor(s) to be used by Respondent in the Work, but must have a good faith basis for such disapproval which shall be stated in the notice. In such event, Respondent shall notify EPA of the identity and qualifications of any replacement(s) within fifteen (15) days of the written notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Order, conduct all or part of the removal action, and seek reimbursement of costs from Respondent. During the course of Work, Respondent shall notify EPA in writing seven (7) days in advance of any changes or additions in the principal personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

22. EPA reserves the right to, in good faith, comment upon, request modifications to and modify all deliverables, so long as such comments and modifications are within the scope of this Order. Respondent must fully correct all deficiencies and incorporate and integrate all such information and comments, as directed by EPA, within fifteen (15) days of receipt of EPA comments. At the time any revised deliverable is submitted in response to EPA comments, Respondent shall submit a cover letter briefly summarizing how each EPA comment was addressed and shall certify that no changes were made to the deliverable other than those identified in the cover letter. EPA may unilaterally modify any deliverable if Respondent fails to make the required changes, as long as such modifications are within the scope of this Order. In the event any modification to a deliverable (including any plan submitted under this Order) made by EPA or at EPA's request under this Order affects Respondent's ability to comply with the schedule set forth in Exhibit 2, EPA and Respondent shall agree to an appropriate revision to the schedule (unless EPA's modification or activity is due to Respondent's failure to comply with the Work Plan).

23. Respondent shall not perform any physical on-Site activity under this Order until receiving EPA approval for such activity. While awaiting EPA approval, Respondent shall proceed in accordance with the schedule set forth in Exhibit 2 to this Order with all other tasks and activities which may be conducted independently of the physical on-Site activity which has not been approved.

24. If, after receiving EPA comments, Respondent conducts, or fails to conduct, an activity or amends or revises a report, plan, or other submittal that does not fully reflect EPA's request for changes, EPA retains the right to seek either stipulated penalties or statutory penalties, perform its own studies or cleanup and seek reimbursement from Respondent for its costs, and/or seek other relief.

25. Whenever EPA receives from Respondent a deliverable or other submission which must be approved by EPA, the Agency shall state to Respondent in writing the date by which EPA shall approve or disapprove the deliverable or other submission. EPA shall use its best efforts, in good faith, to make an approval or disapproval decision by the date stated. In the event that approvals or disapprovals by EPA are provided later than promised by the Agency, as above, and this shortens the period allowed for the Respondent to comply with a deadline, the compliance deadlines for the Respondent which are affected by receipt of such approvals or disapprovals shall be extended by one day for each day that EPA's approvals or disapprovals are late, or longer if determined to be appropriate by EPA. An approval by EPA of a deliverable or other submission shall be stated expressly in writing. Except as otherwise provided by this Order, neither a failure of EPA expressly to approve or disapprove Respondent's submissions within a specified time period, nor the absence of comments by EPA, shall be construed as approval by EPA.

26. Should it become necessary to ship materials off-Site, Respondent shall notify EPA in writing no later than three (3) days prior to any such off-Site shipment by Respondent of hazardous substances from the Site for disposal. Respondent also shall provide written notification to the appropriate State environmental official in the receiving state.

- a. This notification shall be in writing, and shall include the following information: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment; and, (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to

another facility within the same state, or to a facility in another state.

- b. The initial identification of the receiving facility will be performed by the Respondent. Respondent shall provide all relevant information, including the information noted above, as soon as practical after a decision is reached, but in no event later than specified in this paragraph.

27. EPA agrees that it will review all available data concerning the location, design, and construction of the repository prior to the disposal of materials therein. After said review, EPA shall timely consult with the State prior to rendering its written opinion about the repository, and EPA shall allow the State adequate time to review available data applicable to the repository. On the basis of such review of available information, EPA shall, prior to disposal of materials in the repository, provide Respondent with EPA's written technical opinion concerning the appropriateness of the location, design, and construction of the repository. EPA reserves the right to evaluate the extent to which the repository is consistent with future response actions relative to the Site and to take any actions necessary to implement such evaluations in accordance with applicable law.

28. In the event that EPA and Kennecott, in consultation with the State, agree that other response actions are necessary at Kennecott Utah Copper and that such actions take precedence over the actions being conducted under this Order, EPA and Kennecott shall revise the schedule for performing the Work required by this Order.

X. MODIFICATION OF WORK

29. In the event of unanticipated or changed circumstances in the Work (as measured with regard to the effective date of this Order), Respondent shall notify the EPA Project Coordinator by telephone within 48 hours of discovery of significant unanticipated or changed circumstances. If the unanticipated or changed circumstances pose an immediate threat to human health or welfare or the environment, Respondent shall notify EPA and the State immediately. If EPA determines that an immediate threat or a significant unanticipated or changed circumstance warrants changes in the Work to be performed, EPA may require Respondent to modify or amend or EPA may modify or amend the Work accordingly or take other actions authorized by CERCLA or the NCP. Respondent shall perform the Work as modified or amended so long as it is within the scope of this Order. In the event a modification or other action by EPA affects Respondent's ability to comply with the schedule set forth in Exhibit 2, EPA and Respondent shall agree to an appropriate revision to the schedule

(unless EPA's modification or activity is due to Respondent's failure to comply with the Work Plan).

30. EPA may determine that Work in addition to tasks defined in the Work Plan may be necessary to accomplish the objectives of the removal action as set forth in Section V of this Order. EPA may request in writing that the Respondent perform such additional Work, if it determines that such additional Work is necessary to complete the removal action. If respondent is willing to perform the additional Work it shall notify EPA in writing within seven (7) days of receipt of the EPA request. The additional Work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan or written Work Plan amendment. EPA reserves the right to conduct the additional Work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

XI. QUALITY ASSURANCE

31. Respondent shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of this Order and the approved Sampling and Analysis Plan. Respondent will assure that its field personnel are properly trained in the use of field equipment and chain-of-custody procedures.

32. To provide quality assurance and maintain quality control, Respondent shall:

- a. Use a laboratory which has a documented quality assurance program that complies with EPA guidance (which guidance shall be supplied by EPA to Respondent within three days of the effective date of this Order);
- b. Ensure that such laboratory performs analyses according to EPA-approved methods or methods deemed satisfactory by EPA (if a non-approved method is proposed, Respondent shall submit all protocols to be used for analyses to EPA for approval at least 30 days before beginning analyses);
- c. Ensure that EPA personnel or authorized representatives are allowed access to such laboratory and personnel; and,
- d. Upon EPA request, have such laboratory analyze samples submitted by EPA for quality-assurance monitoring.

33. In the event that the Respondent fails to use the quality assurance/quality control practices and procedures as outlined in the approved sampling and analysis plan, EPA reserves the right to conduct the Work or any portion thereof pursuant to its authority under CERCLA, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

XII. PROGRESS REPORTS AND MEETINGS

34. During the course of Work under this Order, Respondent shall submit the following reports to EPA:

- a. Mid-Month Construction Reports. During physical on-Site conduct of the removal action, Respondent shall prepare Mid-Month Reports summarizing significant events including daily activities, field adjustments, change orders, summaries of problems and actions to rectify problems, and other such significant information as is customary in the construction industry. Each Mid-Month Report shall be compiled and delivered to EPA on the 20th of each month.
- b. End of Month Progress Reports. The Respondent shall also prepare End of Month Progress Reports containing the following information:
 - (1) Actions taken to comply with this Order, including plans and actions completed during the preceding month;
 - (2) Activities during the preceding month that deviated from or were carried out in addition to those planned;
 - (3) All problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays;
 - (4) Work planned for the next month with schedules relating such Work to the overall project; and,
 - (5) All results of sampling and tests and all other data collected or received under the Order by Respondent during the preceding month, unless previously submitted.

Respondent shall submit such reports to EPA on or before the 10th day of each month during which this Order is in effect (unless the parties otherwise agree).

- c. Final Report. Respondent shall submit a detailed report documenting the Work performed under this Order within 30 days of completion of the removal action.

35. Respondent shall make presentations at and participate in meetings at the reasonable request of EPA during the initiation, conduct, and completion of the removal action. In addition to discussion of the technical aspects of the removal action, topics may include anticipated problems or new issues.

36. EPA and Kennecott shall cooperate with the State in conducting community relations activities with respect to the Site to the maximum extent allowed by policy. Respondent shall cooperate with EPA and the State in providing information regarding implementation of this Order to the public.

XIII. ACCESS, SAMPLING, AND AVAILABILITY OF INFORMATION

37. Respondent authorizes EPA and the State access to on-Site property owned by Respondent at reasonable hours, including, but not limited to, any time during which Work is being performed. EPA shall have such access at any time during an emergency or as authorized by any statute or regulation within EPA's purview which calls for surprise inspection. EPA, the State, and their authorized representatives may enter and freely move about all property at the Site to the degree Respondent retains any indicia of ownership of such property where Work, if any, is being performed, or to be performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its contractor(s) performing Work pursuant to this Order; reviewing the progress of Respondent in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device, or other documentary type equipment; and verifying the data submitted to EPA by Respondent. Respondent shall allow these persons to inspect and copy all non-privileged records, files, photographs, documents, sampling and monitoring data, and other writings related to Work undertaken in carrying out this Order. Respondent may request, at its own expense, a copy of any photographs, video tapes, sound recordings, or similar records, as well as split samples collected by EPA at the Site which are non-privileged. Nothing herein shall be interpreted as limiting or affecting EPA's or the State's right of entry or inspection authority under federal law. Nothing in this Order waives any privilege either party may otherwise have under any federal or

state law. Each party agrees, within 180 days of the effective date of this Order, to furnish the other party with a list of any privileged documents in its possession concerning the Site.

38. EPA and State officials, who are engaged in performing Work at the Site, shall conduct themselves according to the health and safety plan for the Site.

39. Results of sampling, tests, modeling, or other data (including raw data) generated by Respondent, or on Respondent's behalf, as a result of this Order, shall be promptly submitted to EPA and the State, unless determined to be privileged. EPA will promptly make available to the Respondent sampling, tests, modeling, or other data generated by EPA pursuant to this Order unless exempt from disclosure under any federal or state law or regulation.

40. Respondent will notify EPA and the State in writing at least two (2) days (not including Saturday, Sunday, or Federal holidays) prior to mobilizing or conducting significant field events as described in the Work Plan. Upon verbal or written request, the parties shall provide for split or duplicate samples for each other.

41. In any action in which EPA is a party, Respondent waives any objections to admissibility of any data gathered, generated, or evaluated by Respondent in the performance of the Work that has been verified in accordance with the Work Plan. EPA waives any objections to admissibility of any data gathered, generated, or evaluated by EPA in the performance of the removal action that has been verified in accordance with EPA's quality assurance/quality control procedures. Each party agrees to use its best efforts to promptly notify the other party in writing if, for some reason, it believes that data gathered, generated, or evaluated at the Site is incorrect or improper.

42. Each party shall make available to the other and the State, upon request, copies of all factual documents and information within their possession or control or that of their contractors or agents relating to removal activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain-of-custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, personal logs of Respondent's on-Site representatives, or other documents or information related to the Work.

43. Respondent may assert business confidentiality claims under any applicable law covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by applicable law. Such claims shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at

the time the claim is made. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA determines documents or information not to be confidential by the standards set out in 40 C.F.R. Part 2, Subpart B, the documents may be made available for public review. If EPA has finally notified Respondent that the documents or information are not confidential under the standards of section 104(e)(7) of CERCLA, 42 U.S.C. 9604(e)(7), the public will be provided access to the documents to the extent allowed by, and in accordance with, the procedures in 40 C.F.R. Part 2, Subpart B.

44. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data and materials or information submitted pursuant to this Order.

45. EPA will compile the administrative record file for this removal action. Upon EPA request, Respondent shall submit to EPA non-privileged documents developed during the course of Work which may serve as the basis for selection of any response action. Respondent shall provide copies of non-privileged plans, memoranda (including documentation of field modifications), recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Respondent shall additionally submit, upon request, any previous non-privileged written studies conducted under State, local, or other Federal authorities relating to selection of the response action, and all communications between Respondent and State, local, or other Federal authorities concerning selection of the response action. If EPA requests, Respondent shall establish a community information repository at or near the Site to house a copy of the administrative record.

XIV. PROJECT COORDINATORS

46. EPA and Respondent shall each designate their own Project Coordinator.

a. The EPA Project Coordinator is:

Hays Griswold (8HWM-ER)
On-Scene Coordinator
EPA Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2405
(303) 294-7081

b. The Respondent's Project Coordinator is:

Dennis Connell
Kennecott Corporation
10 East South Temple
P.O. Box 11248
Salt Lake City, UT 84147
(801) 322-8322

The Project Coordinators shall be responsible for overseeing the implementation of this Order. EPA and Respondent each have the right to change their respective Project Coordinator. The parties shall notify each other in writing of the name, title, address, and telephone number of any new Project Coordinator at least seven (7) days prior to the change.

47. To the maximum extent possible, communications between EPA and Respondent shall be directed to and through the Project Coordinator. All written communications including, but not limited to, all plans, documents, reports, approvals, disapprovals, and deliverables submitted under this Order shall be hand-delivered, sent by overnight mail, electronically transmitted by facsimile or sent by certified mail, return receipt requested, to the Project Coordinators or to any other persons which EPA or Respondent may designate in writing. Deliverables submitted to EPA shall be sent in triplicate. Deliverables to be submitted to EPA shall also be sent to:

~~Robert McLeod~~ *Brant Everett*
Utah Department of Environmental Quality
Division of Environmental Response and Remediation
288 North 1460 West
Salt Lake City, UT 84116
(801) 538-6848

48. The EPA Project Coordinator shall have the authority vested in the On-Scene Coordinator by the NCP. In addition, the EPA Project Coordinator shall have the authority to halt any Work required by this Order, and to take any action authorized by CERCLA or the NCP. The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work.

49. EPA may arrange for assistance in its oversight and review of the conduct of the removal action. EPA's authorized representative may observe Work and make inquiries in the absence of EPA, but is not authorized to modify the requirements of this Order. In the event that EPA retains an oversight contractor, it will notify Kennecott of the identity of that contractor three (3) days prior to the commencement of oversight by that contractor.

XV. OTHER APPLICABLE LAWS

50. All activities undertaken by Respondent shall be in compliance with all Federal, State, and local laws and regulations, including permit requirements, unless an exemption is provided by section 121(e) of CERCLA, 42 U.S.C. § 9621(e).

XVI. RECORD PRESERVATION

51. All records and documents in EPA's possession that relate in any way to the Site shall be maintained in accordance with federal law; but if for less than ten years, EPA shall notify Respondent. All records and documents in Respondent's possession that relate in any way to the Site shall be preserved while this Order is in effect and for a minimum of 10 years after termination of this Order. After this 10-year period, Respondent shall notify EPA at least 90 days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, Respondent shall, at EPA's cost, provide EPA with the documents or copies of the documents. Respondent may dispose of sample material after having provided 60 days advance notice to EPA.

XVII. STIPULATED PENALTIES

52. For each day that Respondent fails to comply with this Order, Respondent shall be liable for stipulated penalties as set forth in the paragraphs below, unless excused under Section XVIII (Force Majeure). Penalties begin to accrue on the day after performance is due or on the day that a violation occurs and extend through the period of correction. When a revised submission by Respondent is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is provided to EPA. EPA shall provide written notice of violations that are not based on timeliness; nevertheless, penalties shall accrue from the day verbal notice of violation is given. Payment shall be due within 30 days of receipt of a demand letter from EPA.

53. The following stipulated penalties shall be payable per violation per day to the United States for failure to complete the construction of: (1) the diversion structure for the Butterfield Creek as described in the Work Plan before excavation of waste rock, except that necessary for the construction of the diversion structure; and, (2) the sedimentation pond, as described in the Work Plan, before excavation of waste rock, except that necessary for the location of the sedimentation pond.

| <u>Period of Failure to Comply</u> <u>Per Day</u> | <u>Penalty Per Violation</u> |
|--|------------------------------|
| 1st through 15th day | \$2,500 |
| 16th through 30th day | \$5,000 |
| 31st day and beyond | \$25,000 |

54. The following stipulated penalties shall be payable per violation per day to the United States for failure to comply with any other requirements under this Order:

| <u>Period of Failure to Comply</u> <u>Per Day</u> | <u>Penalty Per Violation</u> |
|--|------------------------------|
| 1st through 15th day | \$ 500 |
| 16th through 30th day | \$1,000 |
| 31st day and beyond | \$5,000 |

55. Respondent shall make all payments by forwarding a certified or cashiers check payable to the "Hazardous Substance Superfund" to:

Mellon Bank
U.S. EPA, Region VIII
Attn: Superfund Accounting
P.O. Box 360859M
Pittsburgh, PA 15251

Checks shall identify the name of the Site (Butterfield Waste Rock), the Site identification number (R2), and the EPA docket number of this Order, and shall identify the payment as "Stipulated Penalties". A copy of the check and transmittal letter, if any, shall be sent simultaneously to the EPA Enforcement Specialist, at:

Maureen O'Reilly, 8HWM-ER
U.S. EPA, Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2404
(303) 294-7505

56. Respondent shall pay interest on any unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by section 107 of CERCLA, 42 U.S.C. § 9607.

57. In the event that EPA provides for corrections or modifications to a document to be reflected in a subsequent deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

58. The imposition of stipulated penalties is in EPA's discretion. EPA may in its discretion impose a lesser penalty or no penalty at all for violations subject to stipulated penalties. EPA agrees that if EPA seeks stipulated penalties for a violation, EPA shall not seek statutory penalties for the identical violation. Similarly, if EPA seeks statutory penalties for a violation, EPA shall not seek stipulated penalties for the identical violation. Imposition of the stipulated penalties provisions does not preclude EPA from conducting all or part of the removal action because of the Respondent's failure to comply with this Order. Payment of stipulated penalties does not alter Respondent's obligation to complete performance under this Order. In the event that EPA assumes performance of a portion or all of the Work because of Respondent's failure to perform the Work in accordance with the Work Plan, Respondent shall be liable for the following stipulated penalties:

For a violation under Paragraph 53 of this Order, Respondent shall pay stipulated penalties in an amount equivalent to that specified in Paragraph 53 for each day constituting a day of violation, plus \$25,000.

For a violation under Paragraph 54 of this Order, Respondent shall pay stipulated penalties in an amount equivalent to that specified in Paragraph 54 for each day constituting a day of violation, plus \$5,000.

XVIII. FORCE MAJEURE

59. A "force majeure", for purposes of this Order, is defined as any event that arises from causes beyond the control of Respondent and of any entity controlled by Respondent, including its contractors and subcontractors, and that delays the timely performance of any obligation under this Order notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and, (b) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any Work to be performed under this Order and financial difficulty of Respondent to perform such Work.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent shall notify by telephone the EPA Project Coordinator, or in his or her absence, the Director of the Hazardous Waste Management Division, EPA

Region VIII, within 24 hours of when the Respondent in good faith knew that the event might cause a delay. Within five (5) days after Respondent knew that the event might cause a delay, Respondent shall provide in writing: (a) the reasons for the delay; (b) the anticipated duration of the delay; (c) all actions taken or to be taken to prevent or minimize the delay; (d) a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and, (e) a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondent shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall subject Respondent to stipulated penalties for such failure as provided in paragraph 54.

61. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Order that are directly affected by the force majeure event shall be extended by agreement of the parties for a period of time not to exceed the actual duration of the delay caused by the force majeure event, or longer if deemed appropriate by EPA. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any unrelated subsequent obligation. No stipulated penalties shall accrue if a delay is caused by a force majeure event.

XIX. REIMBURSEMENT OF RESPONSE COSTS

62. After the first day of the calendar year following the year in which Work is completed as required by this Order, EPA shall submit to Respondent a complete response cost package for costs not inconsistent with the NCP incurred by EPA with respect to this Order. All response costs shall be due and payable within sixty (60) days of Respondent's receipt of the cost package. Upon request, EPA will meet with Respondent at EPA's Regional offices to explain the cost package. Within the same sixty (60) day period, Respondent shall also identify in writing those costs it has determined to include or be the result of computation errors. EPA may extend the payment period for these specific disputed costs if it determines there is good cause to evaluate the effect of any computation errors. If EPA determines that such errors exist, it shall provide Respondent with a new response cost figure for those disputed costs. Respondent shall pay this amount within thirty (30) days of receipt of the new response cost figure.

63. For payment under this section, Respondent shall remit a certified or cashier's check, made payable to the "Hazardous Substance Superfund", to the following address:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859M
Pittsburgh, PA 15251

or other such address as EPA may designate in writing. Payments must be designated as "Response Costs--Butterfield Waste Rock Site" and shall reference the payor's name and address, the EPA Site identification number Site No. R2, and the docket number of this Order. Copies of the transmittal letter and check shall be sent to the EPA Enforcement Specialist at the time of payment.

64. If payment is not received by EPA when payment is due, interest shall accrue from the date the costs are due. Interest shall accrue on the unpaid balance until such costs and accrued interest have been paid in full. The interest rate shall be the rate specified for interest on investments of the Hazardous Substances Superfund in section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Interest will be compounded annually. On October 1, of each subsequent fiscal year, any unpaid balance will begin accruing interest at a new rate to be determined by the Secretary of the Treasury.

65. EPA reserves its rights to bring an action against the Respondent to enforce the cost reimbursement provisions of this Order, to seek penalties pursuant to section 109 of CERCLA, 42 U.S.C. § 9609, and to bring an action pursuant to section 107 of CERCLA, 42 U.S.C. § 9607, to recoup response costs set forth in the accounting not reimbursed by Respondent, subject to the limitations stated above.

XX. EFFECT OF SETTLEMENT

66. With regard to claims for contribution against Respondent for matters addressed in this Consent Order, the Parties agree that the Respondent is entitled, as of the effective date of this Order, to such protection from contribution actions or claims as is provided by CERCLA section 113(f)(2), 42 U.S.C. § 9613(f)(2).

67. Upon payment of the response costs specified above and EPA's acceptance of the Notice of Completion as provided in paragraph 80, EPA covenants not to sue Respondent for any Work, other than for such matters that arise out of conditions which are unknown at the time this agreement is entered into, operation and maintenance and related requirements at the repository, undertaken by EPA or Respondent relating to or arising out of the removal action as described in the Work Plan and agrees not to assert any CERCLA claims or causes of action against Respondent with respect to matters addressed in this Order, except as provided herein.

68. Respondent waives any statutory or common law claims it may have against EPA relating to or arising out of this removal action. Nothing in this Section shall preclude enforcement of this Order.

XI. RESERVATIONS OF RIGHTS

69. Except as expressly provided in this Order, each party reserves all rights and defenses it may have, including assertion of applicable privileges. Nothing in this Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, either stipulated penalties or statutory penalties, and/or punitive damages. Respondent retains its right to assert claims against other potentially responsible parties at the Site.

XXII. DISCLAIMERS

70. The execution and implementation of this Order by Respondent does not necessarily indicate agreement with EPA's Findings of Fact, Conclusions of Law, and Determinations. Furthermore, the participation of Respondent in this Order shall not constitute an admission of liability. This Order is not admissible in evidence against Respondent as evidence of liability in any judicial or administrative proceeding other than a proceeding by the United States, on behalf of EPA, to enforce this Order or a judgment relating to it. The parties agree not to contest the validity or terms of this Order, or the procedures underlying or relating to it in any action brought to enforce its terms.

71. Nothing in this Order is intended to release any claims, causes of action, or demands in law or equity of any party against any entity not subject to this Order for any liability arising out of or in any way relating to the Site.

XXIII. OTHER CLAIMS

72. In entering into this Order, Respondent waives any right to seek reimbursement under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), for costs reimbursed or Work performed under this Order. Respondent also waives any right to present a claim under sections 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612. This Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

73. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, subsidiary, or corporation not a party to this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

74. EPA shall not be responsible for Respondent's costs and attorneys fees incurred in relation to this Order.

XXIV. INDEMNIFICATION

75. EPA shall not be liable for any injury or damages to persons or property resulting from acts or omissions of the Respondent or its contractors in implementing the requirements of this Order.

76. Respondent agrees to indemnify and hold EPA, its agents, representatives, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, agents, servants, receivers, successors, or assigns, or any persons acting on behalf of Respondent including, but not limited to, firms, corporations, subsidiaries, and contractors, in carrying out activities under this Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondent in carrying out activities under this Order.

XXV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

77. The effective date of this Order shall be September 20, 1991.

78. This Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by both parties. The EPA On-Scene Coordinator does not have the authority to sign amendments to the Order.

79. No informal advice, guidance, suggestions, assurances, or comments by EPA or its authorized representatives shall modify the terms and conditions of this Order or relieve Respondent of its obligations under this Order, including its obligations to obtain formal approvals. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules, and Work required by this Order are, upon written approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved documents shall be considered a violation of this Order.

XXVI. TERMINATION AND SATISFACTION

80. This Order shall terminate when Respondent demonstrates in writing and certifies to the satisfaction of EPA that all activities required under this Order, including any additional Work agreed to, payment of response costs, and payment of any stipulated penalties demanded by EPA, have been performed or paid and EPA has approved the certification in writing. Respondent shall submit a written Notice of Completion to EPA upon completion of all the terms of this Order indicating that, in Respondent's opinion, the tasks required by the Order have been completed. EPA shall in good faith, either accept or reject Respondent's Notice of Completion within 30 days of receipt by issuing a written notice to that effect. If EPA elects to reject Respondent's Notice of Completion, EPA shall include in its written notice of rejection a detailed statement identifying the terms of this Order which EPA considers incomplete. Respondent shall then submit to EPA a revised Notice of Completion that reflects EPA's comments within a period to be specified by EPA in the notice of rejection. EPA's approval of Respondent's Notice of Completion shall not, however, terminate Respondent's obligation to comply with any continuing obligations of this Order.

81. The Notice of Completion shall be signed by a responsible official representing the Respondent. The official shall make the following attestation, "I certify, to the best of my knowledge, that the information contained in or accompanying this certification is true, accurate, and complete.". For purposes of this Order a responsible official is a corporate official who is in charge of a principal business function.

XXVII. SIGNATORIES AND COUNTERPARTS

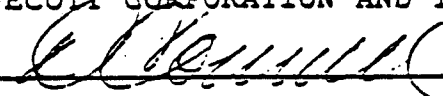
82. The undersigned representatives of the parties certify that they are fully authorized to enter into the terms and conditions of this Order and to execute and legally bind the party they represent to this document.

83. This Order may be executed in any number of counterparts, each of which when executed and delivered to EPA shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

IT IS SO AGREED:


RESPONDENT

KENNECOTT CORPORATION AND ITS SUBSIDIARY COMPANIES

BY:  NC DATE: 9-18-91

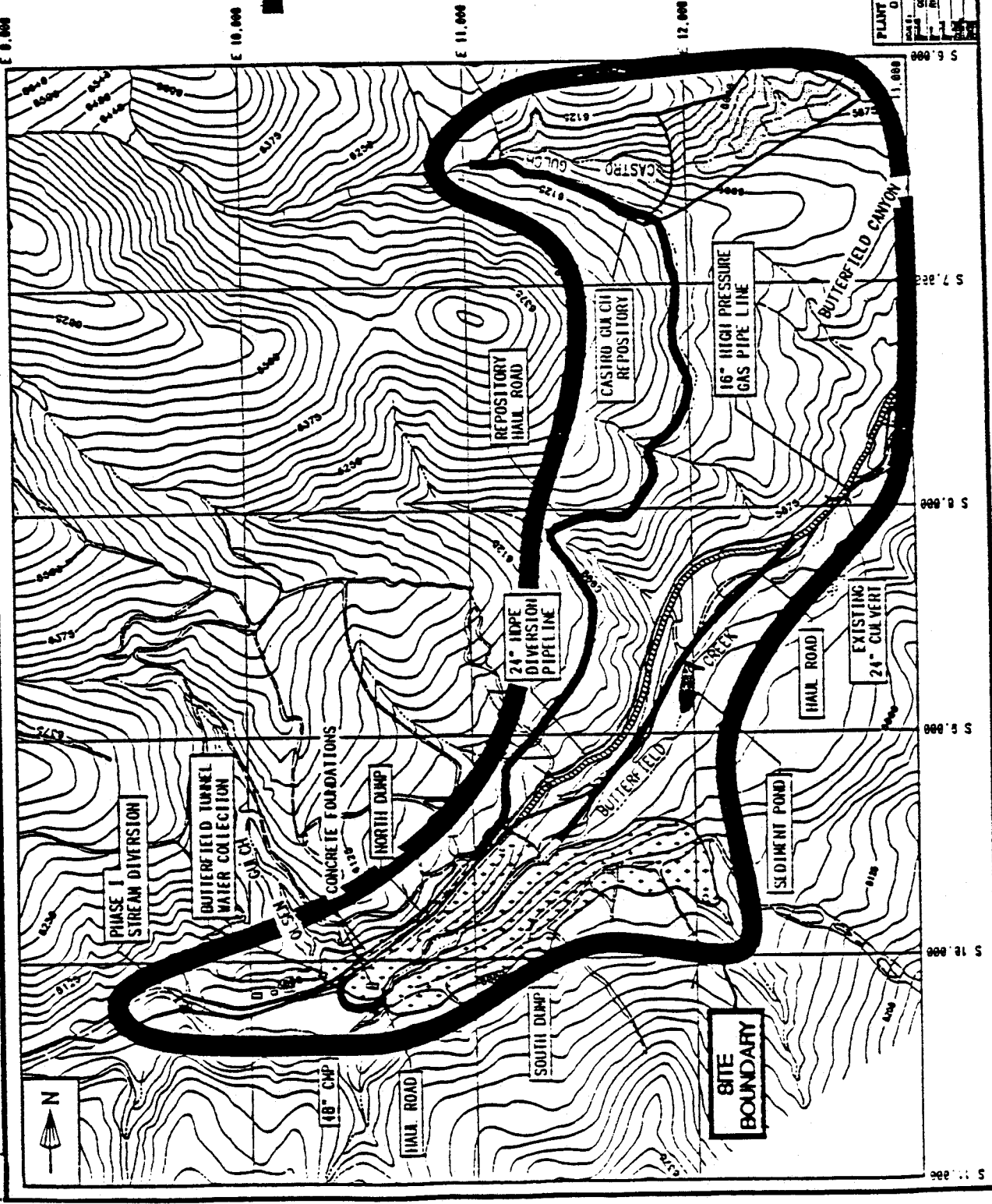
IT IS SO ORDERED AND AGREED:

ENVIRONMENTAL PROTECTION AGENCY, REGION VIII

BY:  DATE: 9-19-91
Robert L. Duprey, Director
Hazardous Waste Management Division

33-00000

THE SITE, FOR PURPOSES OF THIS ORDER INCLUDES THE AREAL EXTENT OF WASTE ROCK DEPOSITION AND AREAS AFFECTED BY WASTE ROCK IN BUTTERFIED CANYON, SLAGING AREAS FOR THE REMOVAL ACTION, THE CISTERN REPOSITORY, AND TRANSPORTATION ROUTES TO THE REPOSITORY. THE SITE IS DEPICTED ON THIS EXHIBIT II AS THAT AREA OUTLINED BY THE BLACK BORDERED RED LINE.

[illegible]

KENNECOTT
UTAH COPPER
BUTTERFIELD MINE
WASTE DUMPS
PHASE I
SOUTH DUMP REMOVAL
Est. No. 4511-

| | | |
|----------------------|-------|---------|
| PLANT PROJECTS GROUP | DATE: | 1/20/81 |
| | BY: | AKC |